

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Review of the Definition of)	
Universal Service)	

**REPLY COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

I. INTRODUCTION AND SUMMARY

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) hereby submits these reply comments in the above-noted proceeding concerning the Federal-State Joint Board on Universal Service's (Joint Board) review of the definition of universal service.¹ OPASTCO is a national trade association representing over 500 small telecommunications carriers serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). In addition, they are all eligible telecommunications carriers (ETCs) in their service areas.

¹ *Federal-State Joint Board on Universal Service, Federal-State Joint Board on Universal Service Seeks Comment on Review of the Definition of Universal Service*, Public Notice, CC Docket 96-45, FCC 01-J-1 (rel. Aug. 21, 2001). (Public Notice)

OPASTCO is in agreement with the other commenters that recommend the addition of equal access to interexchange service to the list of supported services. Equal access meets all four of the definitional criteria enumerated in the Telecommunications Act of 1996 (1996 Act, Act) for inclusion as a supported service. In addition, adding equal access to the list of supported services does not conflict with section 332(c)(8) of the Act because it would not require wireless carriers to provide equal access. If a wireless carrier *chooses* to seek ETC status and offer services that substitute for a local exchange carrier's (LEC) services, then it should be capable of offering equal access to interexchange service, which Congress deemed important enough to require all LECs to provide. Without support for equal access, some rural consumers will be unable to receive the full benefits of competition and choice in the interexchange market, contrary to both Congressional intent and Commission goals. Furthermore, the exclusion of equal access from the list of supported services provides wireless carriers with a support windfall which contravenes the Joint Board's competitive neutrality principle.

OPASTCO also urges the Joint Board to reject the General Services Administration's (GSA) recommendation to support only primary lines. Non-primary lines are often used by customers to access the Internet and for other information services. Thus, supporting only primary lines would be entirely inconsistent with the Act's universal service principle that rural customers have access to information services at rates that are reasonably comparable to urban area rates. It would also stymie the rollout and penetration of advanced services. In addition, such a policy could make rural areas less attractive to businesses and have a detrimental effect on rural economies. Finally, the Commission has already experimented with a primary/non-primary line

distinction for price cap carriers' subscriber line charges (SLCs) and subsequently eliminated the distinction due to its administrative complexity and the costs it imposed on consumers. The Joint Board should not recommend what has already proven to be a flawed policy in practice.

II. THERE IS SUPPORT IN THE RECORD FOR ADDING EQUAL ACCESS TO THE UNIVERSAL SERVICE DEFINITION

In its initial comments, OPASTCO urged the Joint Board to recommend that equal access to interexchange service be added to the list of services that are supported by universal service. As OPASTCO explained, equal access to interexchange service meets all four of the section 254(c)(1) definitional criteria. Specifically, equal access is essential to public safety, it is being subscribed to by a majority of residential subscribers, it has already been deployed in public telecommunications networks, and it is consistent with the public interest, convenience, and necessity.² Moreover, Congress felt strongly enough about the benefits of equal access that it mandated all LECs to provide it.³

Other commenters agree that equal access should be added to the list of supported services.⁴ Like OPASTCO, the National Telephone Cooperative Association (NTCA) explains how equal access meets all of the section 254(c)(1) criteria.⁵ NTCA also effectively explains that adding equal access to the list of supported services would not be contrary to section 332(c)(8) of the Act, which prohibits any requirement that commercial mobile service providers offer equal access. This is because “making universal service

² See, OPASTCO at 3-5.

³ 47 U.S.C. §251(b)(3).

⁴ National Telephone Cooperative Association (NTCA) at 2-6; Montana Universal Service Task Force (MUST) at 7-8, 13-14, 20. In addition, GVNW states that it does not find any new services that meet the section 254(c) criteria, *with the possible exception of equal access to interexchange service*. GVNW at 4.

⁵ NTCA at 2-4.

support conditioned upon the provision of equal access in no way ‘requires’ a CMRS provider to offer it.”⁶

Indeed, OPASTCO stresses that it in no way advocates a general requirement for all wireless carriers to provide equal access to interexchange service, which is clearly prohibited under section 332(c)(8). However, the decision to seek ETC status is a choice, not a requirement. Of course, ETC designation is attractive because it is what makes a carrier eligible for universal service support funds. But, with that designation comes the responsibility to provide rural and high cost customers with a baseline level of service. Certainly, if Congress felt strongly enough about the importance of equal access to require all LECs to provide it, then it must have also intended for any carrier that makes a service offering that directly substitutes for a LEC’s services to do so as well. Perhaps this is why the Act’s definition of a “local exchange carrier” provides the Commission with the authority to find that the provision of commercial mobile service, in certain instances, should be included in the LEC definition.⁷

Equal access is particularly important in rural service areas because smaller calling scopes necessitate a higher percentage of toll calls compared to urban areas.⁸ Often, calls to medical and emergency services, schools, and local government offices are toll calls in rural service areas, as the Joint Board itself has recognized.⁹ In the recent Rate-of-Return Access Charge Reform Order, the Commission states that it seeks to ensure that rural Americans receive the benefits of competition and choices in the

⁶ *Ibid.* at 5.

⁷ 47 U.S.C. §153(26).

⁸ A comparison of the average local and toll revenue sources between rural and non-rural carriers shows that 66 percent of the average rural carrier subscriber’s bill comes from toll charges compared to only 53 percent for the average non-rural carrier customer. *See*, Rural Task Force White Paper 2, *The Rural Difference* (Jan. 2000) at p. 42.

interexchange services market.¹⁰ However, this goal will not be fulfilled to the greatest extent possible until *all* ETCs are required to provide customers with a real choice among toll providers.

In addition, the Montana Universal Service Task Force (MUST) addresses the support windfall that wireless carriers receive in the service areas of rural telephone companies as a result of equal access not being included in the universal service definition. As MUST explains: “Since wireless carriers are not required to make the expenditures necessary to provide equal access but nonetheless receive support based on the incumbent wireline carrier’s costs (including the costs of providing equal access), this portion of support appears to be a windfall to the wireless carriers and is therefore an unfair competitive advantage.”¹¹ OPASTCO wholeheartedly agrees.¹² The support windfall wireless carriers presently receive is patently inconsistent with the Joint Board and Commission’s competitive neutrality principle.¹³ Such inequities also lead OPASTCO to agree with TDS that the Commission should evaluate whether its current portability rules are neutral and consistent with the need to prevent nationwide customers

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 122, para. 65 (1996). See also, NTCA at 3.

¹⁰ *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Federal-State Joint Board on Universal Service, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation, Prescribing the Authorized Rate of Return for Interstate Service for Local Exchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166, FCC 01-304 (rel. Nov. 8, 2001), paras. 182, 190. (Rate-of-Return Access Charge Reform Order)

¹¹ MUST at 8.

¹² See, OPASTCO at 7-8.

¹³ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801-8802, paras. 46-49 (1997).

from paying more than “sufficient” support.¹⁴ For all of the foregoing reasons, the Joint Board should recommend the addition of equal access to the universal service definition.

III. GSA’S RECOMMENDATION TO SUPPORT ONLY PRIMARY LINES IS INCONSISTENT WITH UNIVERSAL SERVICE PRINCIPLES AND HAS PROVEN TO BE ADMINISTRATIVELY CUMBERSOME IN PRACTICE

GSA recommends that the universal service definition only support primary lines.¹⁵ GSA fails to explain, however, how its recommendation comports with the section 254 principle that rural and high cost areas have access to telecommunications and information services at rates that are reasonably comparable to those available in urban areas.¹⁶ As the Joint Board well knows, non-primary lines are often used for access to the Internet, fax machines, and other information services. Many subscribers -- businesses and residences alike -- need access to these information services and devices without forgoing regular voice telephone calls. Thus, supporting only primary lines would make the cost of access to information services incomparable to the rates available in urban areas, contrary to section 254(b)(3). Moreover, policies that discourage connections for basic, dial-up Internet service and other information services would hinder the deployment and penetration of advanced services, contravening sections 254(b)(2) and 706.

In addition, the support of non-primary lines is essential to small businesses located in rural communities and for attracting new businesses to these areas. Small businesses create jobs which are vital to the continued viability of fragile rural

¹⁴ TDS at 18-19. OPASTCO believes that the most competitively neutral way to resolve the portability issues raised in TDS’s comments is to base each ETC’s universal service support on their own costs of providing the supported services. *See*, comments of NRTA and OPASTCO, filed July 30, 2001, in *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 16 FCC Rcd 11244, 11325-11327, paras. 207-211 (2001).

¹⁵ General Services Administration (GSA) at 4-5.

¹⁶ 47 U.S.C. §254(b)(3).

economies. The smallest rural businesses represent the most vulnerable segment of the business community and they typically have the least ability to pass on increased costs to their customers in the form of higher prices. A small business, with a single telephone line and an additional computer or fax line, has the choice of either dropping one of its essential lines or moving out of the rural area if it wants voice-grade access at a rate that is reasonably comparable to rates charged in urban areas. Forcing businesses to relocate where rates are reasonable is antithetical to universal service principles.

Finally, GSA states that the administrative burdens caused by differentiating between primary and secondary lines are “speculative or exaggerated.”¹⁷ GSA must not be aware that the primary/non-primary line distinction had already been adopted as a transitional measure for price cap LECs’ SLCs and was subsequently eliminated for the most part in the CALLS Access Charge Reform Order. In that Order, the Commission stated that getting rid of the distinction “will go a long way to eliminate the customer confusion that now exists” and “eliminate the costs associated with administering this distinction, which are ultimately borne by customers.”¹⁸ The Commission also declined to adopt a primary/non-primary line distinction in the Rate-of-Return Access Charge Reform Order, taking into consideration that the administrative burdens of implementing the distinction would be greater for small rate-of-return carriers than for price cap

¹⁷ GSA at 5.

¹⁸ *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users, Federal-State Joint Board on Universal Service*, Sixth Report and Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, FCC 00-193 (rel. May 31, 2000), para. 100. (CALLS Access Charge Reform Order)

carriers.¹⁹ The Joint Board should not recommend a policy which has already been experimented with and ultimately abandoned for its administrative complexity and costliness.

IV. CONCLUSION

For the reasons set forth above, and in OPASTCO's initial comments, the Joint Board should recommend that equal access to interexchange service be included in the universal service definition. Congress believed the benefits of equal access to be so important that it required all LECs to provide it. Certainly, rural consumers -- who are particularly reliant on toll services -- should be able to receive the benefits of the competitive interexchange market regardless of the ETC that is providing them with service. Adding equal access to the universal service definition would also address the inequitable windfall of support that wireless ETCs presently receive.

In addition, the Joint Board should reject GSA's proposal to support only primary lines. Supporting only primary lines would make the rates for dial-up Internet access and other information services incomparable to the rates charged in urban areas, thwart the penetration of advanced services, and make rural areas unattractive to businesses. Furthermore, the Joint Board should not recommend a policy which has already been experimented with by the Commission and ultimately rejected for its administrative complexity.

¹⁹ Rate-of-Return Access Charge Reform Order, para. 47.

Respectfully Submitted,

**THE ORGANIZATION FOR THE
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January 4, 2002

CERTIFICATE OF SERVICE

I, Alicia C. Reid, hereby certify that on this, the 4th day of January, 2002, a copy of OPASTCO's comments was sent by United States mail, first class, postage prepaid, to those listed on the attached sheet.

/s/ Alicia C. Reid
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CC Docket No. 96-45

FCC 01-J-1

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